IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT

JODHPUR.

ORDER

Rajasthan Vikas Sansthan through its Chairman, Jodhpur.	vs.	Shri G.S. Sandhu,Secretary, Medical & Health Department, Jaipur & anr.

S.B. Civil Misc. Contempt Petition No.195/2005 in S.B.Civil Writ Petition No.3969/02 under Section 10 and 11 read with Section 17 of the Contempt of Courts Act.

Date of Judgment: May 7th, 2007.

PRESENT
HON'BLE MR. PRAKASH TATIA,J.

Ms. M.R. Singhvi for the petitioner.
Mr. R.P.S.Choudhary, Addl.Advocate General for the respondents.

BY THE COURT:

REPORTABLE

This contempt petition has been file by the petitioner under Sections 10 and 11 read with Section 17 of the Contempt of Courts Act as well as under Article 215 of the Constitution of India.

Brief facts of the case are that the petitioner society is registered society under the Societies Registration Act, 1958. The petitioner society wanted to open B.Sc. Nursing Course College. The petitioner society applied for No Objection Certificate from the State as required under the instructions issued by the Indian Nursing Council. The No Objection Certificate(for short “NOC” hereinafter) was granted by the

Government of Rajasthan to the petitioner society on 24.4.2002 on condition of obtaining no objection by the petitioner from the Indian Nursing council, New Delhi for opening B.Sc. Nursing Course College. After obtaining NOC for opening B.Sc. Nursing Course College at Jodhpur, from the Government of Rajasthan, the petitioner sought no objection from the Indian Nursing Council, New Delhi by sending letter dated 3.5.2002. The petitioner also paid the fee of Rs.50,000/- by Demand Draft dated 1.5.2002 to the Indian Nursing Council, New Delhi. The Indian Nursing Council by letter dated 28.8.2002 (Annx.7) agreed to inspect the petitioner's Nursing College on 3.9.2002 and it was communicated to the petitioner vide letter dated 28.8.2002 (Annx.7). Ultimately the petitioner's institution was duly inspected by the Indian Nursing Council,New Delhi. The petitioner also applied for getting affiliation from the University of Rajasthan, Jaipur for its college vide letter dated 26.4.2002 and sent a draft of Rs.105000/- to the University of Rajasthan along with letter dated 26.4.2002. The University of Rajasthan vide communication dated 8.8.2002 (Annx.9), granted no objection to the proposal of the petitioner for opening the B.Sc. Nursing Course College subject to the condition that if such permission granted by the Indian Nursing Council also and with condition that no student shall be admitted to the said course unless and until approval of Indian Nursing Council, New Delhi is obtained as well as actual affiliation

is obtained from the University of Rajasthan. It appears that some norms were changed and, therefore, the State Government vide letter dated 7.8.2002 (Annx.10) informed that no objection for opening B.Sc. Nursing Course College issued in favour of the petitioner for capacity of 100 seats shall be for 60 seats in place of 100 seats. The reducing the seats was though objected by the petitioner by letter dated 12.8.2002 but that is not very much relevant for the purpose of deciding this contempt petition.

As per the facts pleaded in the writ petition, the controversy arose because of the reason that according to the petitioner, the then Health Minister without disclosing his identity, visited the petitioner's institute and according to the petitioner, the Hon'ble Minister misbehaved with employee of the petitioner-institute and forcibly proceeded to open the chamber of the petitioner institute's Director, and the chamber of the Director of the petitioner's institute was opened forcibly and search was made. This incident happened on 4.9.2002 at about 4 p.m. and the petitioner-institute immediately submitted a criminal complaint in the court of Chief Judicial Magistrate, Jodhpur on 5.9.2002, copy of which has been placed on record by the petitioner in the writ petition as Annx.12. The complaint was sent to the concerned Police Station under Section 156(3), Cr.P.C. for investigation. Then just 20 days after the above incident, on 25.9.2002, the petitioner received

a show cause notice asking the petitioner to explain why the NOC granted by the Government of Rajasthan for opening B.Sc. Nursing Course College to the petitioner may not be cancelled. By the same communication dated 25.9.2002 (Annx.13) the petitioner's NOC dated 24.4.2002 was suspended. The petitioner, therefore, filed the writ petition which was registered as S.B.Civil Writ Petition No.3969/2002 and prayed for relief that the communication dated 25.9.2002 (Annx.13) suspension order, suspending petitioner's NOC dated 24.4.2002 as well as the order of reducing the strength of the seats of the petitioner's college from 100 to 60 be quashed. The petitioner further sought direction that the State Government may be directed to do the needful so that the petitioner may start B.Sc. Nursing Course College.

In the writ petition, joint reply was submitted by the State as well as by the Hon'ble Minister. In reply, the visit of the Minister to the petitioner's institute and petitioner's filing criminal complaint were not disputed and it was submitted that the petitioner was already served with show cause notice dated 7.8.2002 and explanation was sought by the petitioner why the NOC granted in favour of the petitioner may not be cancelled. It is denied that the communication dated 25.9.2002 and suspension of the NOC granted by the State was act of revenge on the part of the Health Minister. In the reply it was also submitted that for running an institute, affiliation is required from the hospital/hospitals

which individually or jointly may have beds capacity of 250 beds. It is submitted that the petitioner was not fulfilling the requisite criteria for grant of permission for opening the B.Sc. Nursing Course College.

In the writ petition, this Court vide order dated 4.10.2002 directed the Indian Nursing Council, New Delhi to process the petitioner's application as per the Rules if the petitioner complied with all the formalities. According to the petitioner, in pursuance of the order of this Court dated 4.10.2002, the Indian Nursing Council inspected the petitioner's institute but did not provide the report to the petitioner despite the fact that it should have been disclosed under Section 13 of the Indian Nursing Council Act.

Be it as it may be, the petitioner's writ petition, S.B.Civil Writ PetitionNo.3969/2002 was decided by the court vide judgment dated 1.3.2005. This Court on finding that in fact vide Annx.13 dated 25.9.2002, the State Government has only suspended NOC which was issued in favour of the petitioner for opening the Nursing College that without going into the allegations of the malafides etc. and looking to the nature of relief claimed by the petitioner, it will be sufficient to direct the State Government to decide the proceedings initiated vide communication dated 25.9.2002 by which the State sought to cancel NOC issued to the petitioner for opening the B.Sc. Nursing Course College. This Court also observed that the Indian Nursing Council if has

not provided the inspection report of the petitioner's institute to the State Government then the same may be provided to the State Government forthwith. The State Government was directed to decide the matter strictly in accordance with the rules and law applicable in the matter of grant of NOC for opening the B.Sc. Nursing Course College. The time was also fixed in the order by this Court dated 1.3.2005 that the Indian Nursing Council shall provide the report within a period of one month and the State Government shall decide the matter within three months thereafter.

The petitioner has filed the present contempt petition for punishing the contemner on the ground that in spite of the directions of this Court given in the judgment dated 1.3.2005 passed in S.B.Civil Writ Petition No.3969/02 and despite submitting report by the Indian Nursing Council to the State Government (information of which was given to the petitioner by the Indian Nursing Council vide letter dated 14.6.2005 (Annx.C/3)) and despite the service of notice of demand of justice upon the State dated 7.7.2005, the contemner has not complied with the direction issued by this Court in Writ Petition No.3969/02, as the suspension order has not been revoked by the contemner.

Notice of contempt petition was issued to the non-petitioner G.S.Sandhu, Secretary, Medical and Health Department, Government of Rajasthan, Jaipur and subsequently notice to the new Secretary,

Medical and Health Department, Government of Rajasthan, Jaipur, Shri Sudhir Bhargava was also issued.

Reply to the contempt petition was filed by the then Secretary, Medical and Health Department, Jaipur Shri G.S.Sandhu. It was stated in the reply affidavit that in compliance of the directions of the High Court dated 1.3.2005, the Indian Nursing Council did not submit its report, therefore, the State Government vide letter dated 25.7.2005 directed the Joint Director, Medical and Health Services, Jodhpur Zone, Jodhpur to submit report. The Joint Director submitted its report on 30.8.2005. Thereafter, the matter regarding grant of NOC for opening the B.Sc. Nursing Course College was considered by the State Government and since the petitioner did not fulfill the required conditions, therefore, NOC granted to the petitioner was cancelled vide order dated 12.1.2006. The copy of this detail order dated 12.1.2006 has been placed on record as Annx.R./1. In view of the decision dated 12.1.2006, the contemners submitted that the contemners have complied with the orders of this Court in its letter and spirit. Along with this reply, copy of the letter written by the State Government to the Secretary, Indian Nursing Council dated 12.1.2006 informing the Indian Nursing Council, New Delhi about cancellation of NOC dated 24.4.2002 by the State (which was granted to the petitioner by the State) is also placed.

The petitioner submitted rejoinder to the reply filed by the

contemner. The petitioner pointed out that in reply to the contempt petition, the contemner stated that the Indian Nursing Council did not submit its report whereas in the order dated 12.1.2006 passed by the State Government itself, there is reference of letter of Indian Nursing Council dated 2.6.2005. By that letter, according to the petitioner, the State Government was informed by the Indian Nursing Council, New Delhi that the Indian Nursing Council has already resolved on the basis of evaluation of the inspection report that the said institution has been permitted to start B.Sc. Nursing Course College for one year from 31.12.2002 with an intake of 40 students per year subject to approval of the State Nursing Council/University. By this letter, the Indian Nursing Council informed the State Government that though the decision has been taken by the Indian Nursing Council in favour of the petitioner but the decision of the inspection report was withheld due to suspension of government order, obviously by which the State Government suspended the NOC. Therefore, the decision dated 12.1.2006 is glaring example of false statement. It is also submitted that since the Indian Nursing Council already inspected the petitioner's institution and found it eligible, therefore, in view of the above decision of the Indian Nursing Council, there was no justification for the State Government to direct the Joint Director, Medical and Health Services, Jodhpur to submit the report because according to the petitioner, all formalities have already

been completed and the petitioner was granted NOC for opening the B.Sc. Nursing Course College by the government itself after satisfying itself about the eligibility of the petitioner in opening the said College. Along with the rejoinder, the petitioner again placed on record the copies of the order of the State Government dated 24.4.2002 by which the NOC was granted by the State Government to the petitioner for opening the B.Sc. Nursing Course College, the copy of the petitioner's letter dated 26.4.2002 sent to the University of Rajasthan, Jaipur for getting affiliation from the University of Rajasthan, copy of the demand draft which was sent along with the letter dated 26.4.2002 by the petitioner to the University of Rajasthan for getting affiliation, copy of the no objection for affiliation of petitioner's College from the University of Rajasthan for opening the B.Sc. Nursing Course College by the petitioner on petitioner's getting no objection from the Indian Nursing Council.

The Contempt Petition was taken up for hearing on 25.4.2006 and on that day the learned counsel for the contemner sought time to obtain instructions from the State Government with respect to the fact of non-consideration of certificate issued by the Chief Medical and Health Officer dated 24.12.2004, copy of which has been placed on record in the Writ Petition No.3969/02 as Annx.A/1 and non-consideration of earlier certificate dated 16.3.2002 (Annx.P/1)

submitted in the writ petitioner wherein the Chief Medical and Health Officer concerned certified that the petitioner-institution has affiliation with hospitals having 410 beds capacity. Thereafter, on 1.5.2006, another fact inquiry report dated 29.4.2006 along with documents which were considered in the report dated 24.4.2006 were submitted by the contemner. In this report it is stated that the petitioner's institute is not having affiliation from hospitals with 250 or 300 beds capacity, therefore, is not eligible to open Nursing Course College. On 23.5.2006 again the matter was heard at some length and this Court considered this report dated 29.4.2006. In the said report dated 29.4.2006, it is mentioned that some of the hospitals which were shown by the petitioner having its affiliation with the hospitals, but they on enquiry stated that they are not attached with the petitioner. The court observed that it is not clear from the enquiry report dated 29.4.2006 whether the hospitals, which according to the petitioner, earlier gave consent for attachment of their hospitals to the petitioner's institution, were apprised with the certificate given by them in favour of the petitioner or not. This Court further observed that twice CMHO concerned gave certificates of eligibility of the petitioner-institute and even Indian Nursing Council granted NOC to the petitioner, still the State Government started fresh enquiry under assumption that the petitioner is a fresh applicant for getting NOC from the State

Government and the State Government is not seeking to cancel the NOC which was granted to the petitioner as back as on 24.4.2002. This Court further observed that prima facie it also appears that the State Government firstly passed the order dated 12.1.2006 without looking into the material available with it and that fact stands admitted if the report dated 29.4.2006 is examined wherein again the State Government held re-enquiry about the affiliation of the hospital with the petitioner instead of first finding out whether the NOC issued to the petitioner could have been cancelled on the grounds mentioned inAnnex.13 which was under challenge before this Court in writ petition No.3969/2002. Secondly, the State Government without disclosing why the concerned hospitals were not appraised with the documents which were produced by the petitioner before the State Government and copies of which have been placed on record of the writ petition no.3969/2002 by the petitioner certifying that the concerned hospitals shall provide practical training of B.Sc. Nursing Course to those who will be admitted in the petitioner's institution. Thirdly, there were certificates of concerned CMHO and of the named hospitals in favour of the petitioner and were on record in the writ petition, they were not looked into by the authorities. It has also not been mentioned by the State Government anywhere that how many Colleges can get affiliation with the one hospital having requisite or more than requisite bed capacity. The court

observed that in view of the above, it appears that the officers of the State Government, who passed the order dated 12.1.2006 and 29.4.2006, prima facie have not complied with the directions of this Court in its true spirit. Therefore, it will be proper to give further opportunity to the contemners to explain the position. In case, the contemners failed to comply with the directions of this Court issued in judgment/order dated 1.3.2005, they shall personally remain present in Court on 10.7.2006.

The contention of the learned counsel for the contemner was also taken note of by this Court in the order dated 23.5.2006 and it is clear from the order dated 23.5.2006 that the learned counsel for the contemners also submitted that he also advised the State Government to look into the matter afresh and has already sent a letter to the Government and he is hopeful that the order of this Court will be complied with in its true spirit.

An additional affidavit was submitted by the petitioner on 27.7.2006 wherein the petitioner submitted that the petitioner-institution itself has constructed its own hospital in an area of 16 bighas of land at Pali Road in Khasara No.399 and the hospital is complete in all respect and possessed of all equipments and infrastructures for running the hospital. This petitioner's hospital has bed capacity of 100 patients.

In pursuance of the order of this Court dated 23.5.2006 passed in

this writ petition, the contemner got the further opportunity to enquire into the matter and compliance report is submitted before this Court which is dated 7.7.2006. This report is also a detail report and the result of the enquiry shown in the enquiry dated 7.7.2006 is as under:-

> " निष्कर्ष
>
> उपरोक्त विवरण से स्पष्ट होता है कि -
>
> - याची संस्था के पास आई.एन.सी. के मापदण्डानुसार वांछित भूमि उपलब्ध है।
>
> - निर्मित भवन की स्थिति स्पष्ट नहीं है, निरीक्षणकर्ता अधिकारी एवं याची संस्था किसी ने भी निर्मित भवन की स्थिति प्रस्तुत नहीं की है।
>
> - याची संस्था के पास 250 बैड के पेरेन्टल/ सम्बद्ध अस्पतालों की उपलब्धता नहीं है।
>
> अत: संस्था द्वारा राज्य सरकार के पत्र दिनांक 25.9.2002 (Annex. 13) की पालना में वस्तुस्थिति प्रस्तुत नहीं किये जाने के कारण संस्था की निलम्बित की गई एन.ओ.सी. को बहाल किया जाना सम्भव नहीं है। निलम्बित एन.ओ.सी. को बहाल किये जाने का कोई कारण/ आधार उपलब्ध नहीं होने के कारण उक्त एन.ओ.सी. को एतद् द्वारा निरस्त किया जाता है।"

In fact the report dated 7.7.2006 which has been submitted as compliance report (as mentioned in the application with which the report dated 7.7.2006 was submitted), is in fact not the report but the decision of the Government, cancelling the NOC granted by the Government to the petitioner for opening B.Sc.Nursing Course College. Along with this letter dared 7.7.2006, the letter sent by the Nursing Tutor, M.G. Hospital, Jodhpur dated 4.7.2006, the letter of the Deputy

Secretary, Medical and Health, Gr.III, Govt. of Rajasthan, Jaipur dated 16.7.2006 addressed to the then C.M.H.O., Jodhpur, the letter of the Shiv Nursing Home addressed to the Registrar, Rajasthan Nursing Council, Jaipur, the letter of Om Kishan Hospital, Jodhpur dated 1.7.2006 addressed to the Registrar, Rajasthan Nursing Council, Jaipur and the letter written from Shubham Hospital, Jodhpur dated 2.7.2006 addressed to the Registrar, Rajasthan Nursing Council, Jaipur are also placed on record. The petitioner objected to the report dated 7.7.2006 by filing objection on 27.7.2006. The petitioner also submitted detail affidavit and after reiterating the facts already submitted by the petitioner, in the writ petition and the contempt petition, submitted that by this time the petitioner institution itself has constructed its own hospital in an area of 16 bighas of land at Pali Road in Khasra No.399 and the hospital is complete in all respect with all equipments and infrastructures. The petitioner also placed on recored the photographs of his hospital and submitted that the petitioner's own hospital has 100 beds capacity. The petitioner also placed on record the copy of letter dated 20.7.2006 sent to the C.H.M.O., Jodhpur with request that the petitioner has constructed its own hospital which may be inspected by the C.H.H.O. The petitioner in his affidavit submitted that fresh investigation was made only with a view to frustrate the direction of the High Court and the State Government has put in all its efforts, pressure

etc. so as to deny the fruits of succeeding in the writ petition and to prevent the petitioner from running its B.Sc.Nursing Course College. The petitioner also, in support of his contention that undue pressure was exerted by the State Officers, placed on record the C.D. wherein event of 2.7.2006 has been recorded. It is stated that the authority of the Rajasthan Nursing Council admitted that Hon'ble the Minister of Medical and Health is running its own institution at Bharatpur which do not possess the numbers of beds and the authority of the Rajasthan Nursing Council admitted that since this institution is belonging to Hon'ble Minister, therefore, they are unable to take any action in the matter. It is stated that Dr. Deepak Srivastava was compelled to disown the affiliation given to the petitioner institution but said Dr. Deepak Srivastava refused to disown affiliation given by it to the petitioner. Then he was threatened of dire consequences. On the basis of this, the petitioner submitted that the possibility cannot be ruled out that other hospitals were also visited in the same manner and the authorities have exerted their undue influence, pressure and were told to face dire consequences. The petitioner also placed on record the list of Nursing Institutes, B.Sc. Nursing Institutes and Physiotherapy Nursing Institutes and submitted that it is impossible to have the requisite number of beds for all the institutes referred in the list submitted by the petitioner as Annx.C/14 along with the affidavit., dated 22.7.2006. Along with the

said affidavit, copy of the C.D. and the list of the General Nursing Training Centers are also submitted by the petitioner. When objection was raised by the contemner about correctness of recording in the C.D., the petitioner submitted affidavit of Dr. Deepak Srivastava of Ambika Hospital, Jodhpur wherein he stated that he recorded the entire event of 2.7.2006 in C.D. which is placed on record by the petitioner as Annx.13. Then the contemner again submitted further reply on 16.10.2006 wherein it is stated that the petitioner has projected his institution at a new place whereas earlier the place of institution was shown at different place. The petitioner and respondent both submitted written arguments and thereafter, on 26.2.2007, the petitioner submitted an additional affidavit to place on record the subsequent events and pointed out that in Rajasthan, the Government is feeling great dearth in the field of teaching in the relevant courses despite the fact that the according to the State, the permission was granted to more than 100 G.N.M. Schools and equal number basic Colleges. The Government planed to have MSC(N) College at least one at Division Head Quarter in the State of Rajasthan and this permission may be granted to the Colleges already running B.Sc.Nursing Course College and who have their own 100 beds capacity in the hospital. The petitioner submitted that in preceding three years, the State Government has granted NOC for 90 GNM, 28 BSc Nursing, 10 post Basic Nursing and 4 Msc Nursing

Course institutes. The petitioner also placed on record the copy of the decision of the Government dated 29.12.2006 (Annx.A). The situation has been explained by the contemner by filing the counter affidavit.

The facts in detail have been mentioned above so that the contentions of both the parties may be considered on the basis of the material placed on record time to time by both the parties.

We may recapitulate that the State granted NOC to the petitioner for opening B.Sc.Nursing Course College on 24.4.2002. The NOC issued by the Government of Rajasthan to the petitioner is as under:-

> "GOVERNMENT OF RAJASTHAN
> MEDICAL AND HEALTH (GR.3) DEPARTMENT
> No.F.5(27)M&H9Gr.3/2000 Jaipur,Dated 24.Apr 2002
> The Secretary,
> Indian Nursing Council,
> Kotla Road, Temple Lane,
> Combined Council Building,
> New Delhi.
>
> Sub.: No Objection Certificate for opening new B.Sc.Nursing College.
>
> Sir,
>
> The application for grant of Essential Certificate/No Objection Certification with following particulars was considered . State Government will have no objection if Indian Nursing Council, New Delhi grants permission for this B.Sc.Nursing College applied for.
>
> 1. Name of applicant : Rajasthan Vikas Sansthan, Jo
> 2. Name of the Institution/ proposed B.Sc.Nursing Colleges : Gorvi College of Nursing
> 3. Type of Institution : B.Sc. Nursing College.
> 4. Place, district where Institution is recommended : Jodhpur (Raj.)
> 5. Capacity (No. Of seats) : 100 (one hundred)
>
> 1. This applicant will not start the college or give admission to

the prospective students till a clear permission to the effect has been issued by the Indian Nursing Council, New Delhi. The Medical Department will provide students to the concern Nursing College only after that college has obtained affiliation from recognised university and clear permission from Indian Nursing Council to start the College.

2. The applicant will follow all the directives issued by the State Government from time to time and standards laid down by I.N.C.

3. Admission to all the sanctioned seats will be strictly in accordance with the procedure and the guidelines given by the Hon'ble Supreme Court/Indian Nursing Council from time to time.

4. The applicant will set up hospital, have trained staff and other facilities as per the rules and regulations of I.N.C. before starting B.Sc. Nursing College. The State Government will not allow attachment to Government hospitals and other facilities for training to the student of private B.Sc. Nursing College. If the college is closed, the responsibility for completion of that course would be of management of the institution.

5. Fee structure will be got approved from the State Government which will be in accordance with the Supreme Court/I.N.C. Directions.

6. This essentiality certificate/No Objection Certificate will be valid only for two years from the date of issue.

By Order,
sd/-24/
Dy.Secretary to the Government.

Copy to the following for information and necessary action:

1. Registrar, Rajasthan University, Jodhpur.
2. Principal, College of Nursing, Jaipur
3. Chief Medical and Health Officer, Jodhpur
4. Shri Manish Vyas, Chairman, Rajasthan Vikas Sasthan, Teesra Prahar Bhawan. Ist 'A' Sardarpura, Jodhpur(Raj.)
5. Guard File.

Sd/-
24/4/2002
Asstt.Secretary to the Government."

No objection for concerned course as well as consent for affiliation to the petitioner by the University of Rajasthan was given on 8.8.2002, copy of this letter is as under:-

"From:

THE REGISTRAR,
UNIVERSITY OF RAJASTHAN,

To

The Chairman,
Rajasthan Vikash Sansthan
TeesraPrahar, 1st 'A' Road,
Sardarpura, Jodhpur (Raj.)

No. F.1(Acad.II/2002/3846 Dated, Jaipur 8.8.2002.

Dear Sir,

With reference to your letter dated 20.6.2002, I am directed to inform you that this University has 'No objection' to your proposal being processed by the Indian Nursing Council (I.N.C.), New Delhi for starting a New College in the name of 'Gorvi College of Nursing, Jodhpur for B.Sc. (Nursing) Course from the session 2002-2003.

The university gives its consent of affiliation for the above mentioned course unless and until approval of the I.N.C., New Delhi No student shall be admitted to the above mentioned course unless and until approval of the I.N.C. New Delhi and affiliation of this university are actually granted to your institution.

Yours faithfully,
sd/- 6.6.2002
Dy. Registrar (Acad.)"

The petitioner's institution was inspected by the team of inspections sent by the Indian Nursing Council on 27.12.2002. The Indian Nursing Council resolved on the basis of evaluation of the inspection report that the said institution is permitted to start B.Sc. Nursing Course College for one year from 31.12.2002 with an intake of 40 students per year subject to approval of the State Nursing Council/University. The Indian Nursing Council, however, withheld the said decision only due to the suspension of the NOC by the State Government, obviously by the State Government's order dated 25.9.2002. This fact, according to the petitioner, was conveyed by the Indian Nursing Council to the State Government vide letter dated 2.6.2005 and reference of which is given

in the first order passed by the State Government dated 12.1.2006 by which the petitioner institution's NOC which was earlier suspended, was cancelled. In the report dated 12.1.2006 itself, the letter of the Indian Nursing Council dated 2.6.2005 itself has been quoted by the Deputy Secretary, Medical and Health Department, Government of Rajasthan. The relevant portion of the order dated 12.1.2006 is as under:-

> " राज्य सरकार द्वारा पत्र दिनांक 13.5.2005 से भारतीय नर्सिंग परिषद, नई दिल्ली को मा. उच्च न्यायालय के आदेश की पालना में उक्त संस्थान की निरीक्षण रिपोर्ट उपलब्ध कराये जाने हेतु लिखा गया। भारतीय नर्सिंग परिषद ने पत्र दिनांक 2.6.2005 द्वारा उत्तर दिया कि :-
>
> - संस्थान की निरीक्षण रिपोर्ट के आधार पर दिनांक 31.12.2002 को, राज्य सरकार की स्वीकृति लेने की शर्त पर एक वर्ष की अवधि हेतु वी.एस.सी. नर्सिंग कोर्स प्रारम्भ करने की स्वीकृति दी गई। भारतीय नर्सिंग परिषद द्वारा, निरीक्षण रिपोर्ट का निर्णय राज्य सरकार द्वारा संस्था की एन.ओ.सी. निलम्बित किये जाने के कारण रोका गया है।"

The NOC of Indian Nursing Council was not accepted by the concerned authority who passed the order dated 12.1.2006 knowingly did not consider the fact that the concerned C.M.H.O. submitted factual report dated 16.3.2004 and the Indian Nursing Council inspected the petitioner-institution and those reports were already acted upon by the Government itself by issuing NOC to the petitioner's institution on 24.4.2002 but on the false pretext that the Indian Nursing Council has

not provided the inspection report after the decision of petitioner's Writ Petition NO.3969/2002 which was decided on 1.3.2005, fresh evidence was collected by taking a false plea that enquiry is necessary because the Indian Nursing Council has not submitted report after the order of this Court dated 1.3.2005 passed in petitioner's writ petition No.3969/2002 despite the fact that in the order dated 1.3.2005, this Court directed the Indian Nursing Council to submit the inspection report to the State Government forthwith **if has not been provided to the State Government.** The concerned authority who passed the order dated 12.1.2006, as noticed, was well aware that the Indian Nursing Council inspected the petitioner's institution on 31.12.2002 and this fact was conveyed in writing to the State Government by Indian Nursing Council, almost six months before the order dated 12.1.2006 was passed by the State authority. The State authority, just after recording the stand of the Indian Nursing Council for no objection to the petitioner's opening of the B.Sc. Nursing Course College, on absolutely frivolous pretext and to collect further evidence, directed the Joint Director, Medical and Health, Jodhpur Division, vide letter dated 25.7.2005, that is after receipt of letter from the Indian Nursing Council dated 2.6.2005, to submit another inspection report. The Joint Director, Medical and Health, Jodhpur Division submitted his report vide letter dated 30.8.2005 and also submitted the photo-stat copies of the letters which

were given by the various hospitals granting affiliation to the petitioner's institution and further the Joint Director, Medical and Health, Jodhpur made it clear that the petitioner's institution has already started negotiation from the U.I.T., Jodhpur for getting 50 bighas of land and also negotiating for purchasing of 32 bighas and 5 biswas of land in village Jhalamand. These facts have been recorded by the authority concerned who passed the order dated 12.1.2006. In the order dated 12.1.2006, the Deputy Secretary recorded names of the hospitals with their bed capacity for which the petitioner submitted that all those hospitals have given their consent of affiliation with the petitioner's college. The beds capacity of the hospitals mentioned in the order dated 12.1.2006 was 554 but that was not accepted because of the reason that as per the government record, except hospitals at S.No.5, rest of nine hospitals already given their affiliation to other institutions. It is also found by the Deputy Secretary concerned that out of 10 hospitals, five hospitals had less than 50 beds capacity, therefore, their affiliation cannot be accepted. It will be worthwhile to note that it was not the case that those hospitals had not given affiliation to petitioner's institution at relevant time. Then important relevant fact was that if the same hospitals, their affiliation to other institutions after giving affiliation to the petitioner's institution then how those other institutions were given NOC by the State Government as these hospitals

could have given affiliation to one hospital only. Ultimately, it was held in the order dated 12.1.2006 that though the petitioner has sufficient land but has no attached hospitals having total 300 beds capacity individually or collectively nor the petitioner owes its own hospital. On this ground it has been held that the petitioner is not entitled to open the B.Sc. Nursing Course College. On this ground alone, the petitioner's institution's NOC was cancelled by order dated 12.1.2006 (Annx.R/1).

As stated above, the entire re-enquiry was conducted by the directions of the State Government and got it conducted through the Joint Director, Medical and Health, Jodhpur under only assumption and pretext that Indian Nursing Council has not provided the inspection report to the State Government. Whereas the State Government itself got the full notice of the fact that the Indian Nursing Council itself has inspected the petitioner's institution on 31.12.2002 and accorded consent to the petitioner for opening the B.Sc. Nursing Course College. The enquiry was got conducted only to get evidence so that the NOC which was issued in favour of the petitioner obviously after holding enquiry by the State itself be cancelled. and the pretext taken by the concerned officer of the State for re-enquiry is a non-existent ground.

Be it as it may be, along with this subsequent report dated 30.8.2005, the Joint Director, Medical & Health, Jodhpur himself submitted the photo-state copies of the letters given by the various

hospitals according affiliation to the petitioner's hospital. In the order dated 12.1.2006, the concerned authority itself recorded the fact of submitting the factual report by the Joint Director, Medical and Health, Jodhpur dated 30.8.2005 wherein he has annexed letters of affiliation given by ten hospitals to the petitioner institution. It is interesting to note that one of the hospitals Goyal Hospital which has 110 beds capacity, a letter was obtained which is dated 12.8.2005, wherein mere it is mentioned that “for this year” we have given affiliation only to K.S.Memoria Education Trust, Jodhpur and not to any other. The words “for this year” in the letter dated 12.8.2005 are relevant because of the reason that before letter dated 12.8.2005, the said Goyal Hospital when had 80 beds capacity, gave letter of affiliation to the petitioner-institution in the year 1999 and copy of which has been placed on record of the writ petition as Annx.P.6. From the letters which were submitted to the Joint Director, Medical and Health, Jodhpur before he submitted report dated 13.8.2005 and copy of which are placed with the subsequent report dated 29.4.2006 submitted by the concerned authorities, it is not disputed that at least Kamla Nagar hospital-80 beds capacity, Lok Seva Hospital-50 beds capacity, L.N. Memorial Hospital-50 beds capacity, again gave affiliation to the petitioner-institution. In addition to above, Om Kishan Hospital-50 beds and Ambika Hospital-70 beds also gave affiliation to the petitioner-institution which is clear

from the report of the Joint Director, Medical and Health, Jodhpur dated 30.8.2004. The hospitals which were having less than 50 beds capacity, their affiliation may not be taken into account then it appears that the petitioner clearly submitted the affiliation of 110 beds of Goyal Hospital, 80 beds of Kamla Nagar Hospital, 50 beds of Lok Seva Hospital, 50 beds of L.N. Memorial Hospital, 50 beds of Om Kishan Hospital and 70 beds of Ambika Hospital.(out of these, it is not disputed that Om Kishan Hospital is closed now). In the order dated 12.1.2006 conveniently it has not been mentioned from which time, out of ten, nine hospitals gave affiliation to other hospitals and why it was not enquired from the administration of Goyal Hospital whether it gave affiliation to the petitioner-institution at relevant time or not. After going through the report of the State Government dated 29.4.2006, this Court on 23.5.2006 observed as under:-

> "At this stage again, the State failed to disclose whether the certificate which were issued by the concerned hospitals named by the petitioner itself and for which the State enquired, whether they were appraised with the certificates issued by them in favour of the petitioner or not. In the said report dated 29.4.2006, it has not been stated that the concerned CMHO did not submit the two reports certifying that the petitioner's institution has attached hospitals with 450 beds. The State Government also did not enquire whether the certificate produced by the petitioner of the concerned hospitals were

in fact issued or not."

This Court clearly observed that the certificates from the various hospitals were obtained but it was not enquired whether the hospitals were appraised with the certificates which they issued in favour of the petitioner or not. Therefore, it appears that the matter was re-examined by the State authorities for this specific issue also which is apparent from the order of the State Government passed on 7.7.2006 wherein the above passage has been quoted by the concerned authorities in the order itself. Despite this clear direction of the court, the concerned authority has not mentioned in the order that the said hospitals were not aware that the petitioner-institution has submitted their affiliation letters and whether those letters were given by them or not. Not only this but along with the order dated 7.7.2006, a letter of Nursing Tutor, MG Hospital, Jodhpur dated 4.7.2006 is annexed. The status of said Nursing Tutor to enquire into the matter is not clear. But be it as it may be, in his report, the Nursing Tutor informed the concerned that Shiv Nursing Home and Shubham Hospital admitted that they gave their affiliation to the petitioner-institution. For Om Kishan Hospital, it is mentioned that the said hospital is at present closed and the Director of Ambika Hospital refused to give any information. A letter given to the then CHMO, Jodhpur dated 2.7.2006, copy of which has been placed on record, whereby the Deputy Secretary of the Medical

and Health Department, sought explanation of the concerned CMHO alleging that he submitted the enquiry report dated 24.12.2004 without holding an enquiry and why action may not be taken against him. Along with the order dated 2.7.2006, copies of letters from Shiv Nursing Home, Om Kishan Hospital and Shubham Hospital are submitted wherein all the three hospitals admitted giving their affiliation to the petitioner-institution at relevant time and the Om Kishan Hospital informed that presently the said hospital has been closed down.

From above all facts given in detail, it is clear that the petitioner's institution contention that at relevant time he was given affiliation by the hospitals which jointly had more than 250 beds capacity and the CMHO twice gave factual report in favour of the petitioner-institution and having affiliation of more than requisite beds capacity hospitals with the petitioner-institution. The authorities tried their best to enquire into the matter whether in fact the petitioner has affiliation even at present from the hospitals having total beds capacity of more than 250 beds. At this juncture, it will be worthwhile to mention here that the petitioner-institution, in supplementary affidavit, clearly stated that at present he is running a Dental Hospital in Jodhpur itself having beds capacity of 100 patients and that hospital is running with the approval of the State itself. Neither the present factual position has been enquired by the State authorities objectively to find

out the correct factual position nor the State authorities looked into the position on the day when the petitioner-institution was given NOC by the State itself for opening the B.Sc.Nursing Course College and the documents already with the concerned authority. The State authorities further deliberately did not took note of the fact that the Indian Nursing Council itself sent its team for inspection of the petitioner-institution and they decided to grant NOC to the petitioner- institution for opening the course in question. The report of the Indian Nursing Council, the two reports of the CMHO dated 16.3.2002 and 24.12.2004 were ignored as well as even the fact was brought to the notice of the State Government by the CMHO in its report dated 24.12.2004 that the Indian Nursing Council has already inspected the petitioner's institution, was also ignored and the orders dated 12.1.2006 and 7.7.2006 were passed. The report dated 29.4.2006 is in fact prepared only to disentitle the petitioner getting the NOC for opening the college.

The contemner got opportunity again and again to carefully look into their own record but the relevant facts have been neither mentioned in the above two orders dated 12.1.2006 and 7.7.2006 but it appears from the orders dated 12.1.2006 and 7.7.2006 as well as the report dated 29.4.2006 that most relevant facts have been suppressed by the contemner. The contemner deliberately suppressed this fact that at relevant time, the hospitals gave their affiliation letters to the

petitioner-institution and secondly, the denial of affiliation by some hospitals was subsequent to the NOC issued to the petitioner by the State Government, then in that situation under what circumstances, when the NOC was cancelled by the State Government, the hospitals which gave affiliation to the petitioner institution in writing on the basis of which the State itself issued NOC, could have been accepted as hospital eligible to give affiliation to other hospitals. The petitioner's plea of affiliation of hospitals having 410 beds capacity was rejected on the ground that some of the hospitals already gave affiliation to other hospitals but on the basis of the affiliation of some hospitals during the continuation of their affiliation to the petitioner-institution, those affiliations were acted upon by the State Government and the State Government gave affiliation to other hospitals in itself is clear irresponsible act on the part of the State authorities.

If the contention of the contemner is examined from another angle then if the petitioner had no affiliation from hospitals then under what circumstances, the State granted permission to the petitioner-institution to open B.Sc. Nursing Course College stands not explained ? Rather say, the facts given by the contemner before this Court are contrary to the decision taken by the State Government itself. It is not the case of the State Government any time, either in the writ petition or in this contempt petition, that the petitioner-institution obtained the

NOC from both the State Government and the Indian Nursing Council by suppressing the fact or by giving false facts to both the authorities. It is also not the case that the concerned CMHO twice gave report in favour of the petitioner in collusion with the petitioner and the reports were false nor it is the case of the contemner that the Indian Nursing Council never inspected the petitioner-institution for grant of no objection for opening the B.SC.Nursing Course College. It is also not in dispute that even the Indian Nursing Council, Delhi issued NOC in favour of the petitioner then what was the occasion for issuing the show cause notice to the petitioner which was challenged by the petitioner by filing writ petition. Not only this but if the State authority was of the view that from enquiry about affiliation of hospital is required then the current fact was not considered that the petitioner, with the approval of the State, started its own hospital with 100 beds capacity.

It is true that in the contempt proceedings, orders passed by the authority in pursuance of the court's directions, neither can be challenged nor their legality and validity can be judged but, at the same time, when the court directs the authorities to decide the representation or take a decision then even if it is not mention in the order that the authority shall act in accordance with law, fairly, reasonably and objectively and decide the issue without prejudice, the above are inherently within the any such order and are required to be

complied with by the persons or authority to whom direction has been issued. If an authority first decides and makes up its mind then collects the evidence to justify his already taken decision or finds the reason for his already taken decision then that is not the compliance of the order by any stretch of imagination. In the present case, we may summarise the total facts in brief. The State Government already granted NOC, obviously must have investigated the facts in relation to the eligibility of the petitioner-institution for opening the Nursing Course. The Indian Nursing Council already inspected the petitioner's institution and issued NOC to the petitioner. To discard the evidence already on record of the Government, like reports of the CMHO, the affiliation letters given by the various hospitals were deliberately, with oblique motive and to deny relief to the petitioner, were ignored. For rejecting the material lying with the State, the evidence was collected to discard all reports which were in favour of the petitioner. The reasons given for collection of fresh material is on the face of it was false as the reason given was the Indian Nursing Council did not submit report despite the fact that in the order dated 12.1.2006 itself, it is mentioned that the Indian Nursing Council already submitted their reports. The contemner deliberately, even after getting several opportunities during this contempt proceedings, attempted to collect more reasons for their already taken decision. The contemner deliberately discriminately treated the

petitioner and rejected his affiliation letters of the hospitals on the ground that subsequently those hospitals gave affiliation to different hospitals and at that time, the certificates of the some hospitals were considered valid for those institutions who could obtain the affiliation letters from hospitals subsequent to their giving affiliation to petitioner's institution, therefore, for the petitioner-institution, the affiliation letters were rejected because of affiliation of the hospitals with other institutions and other institutions were given recognition despite the fact that they already gave affiliation letters to the petitioner-institution. The contemner in their one after other reply and affidavit, stated on oath that they have high regards and esteem for the orders of the High Court. The mere good words of respect from the mouth of a person when disrespect and vengeance or prejudice apparent then those good words of respect are only to misdirect the court and by this one is guilty of lowering down the authority of the court because of the reason that those words of high regards are used for fulfilling their own object and not to do justice. The contemner failed to explain the facts which were in favour of the petitioner-institution before the dispute occurred with the concerned Minister, how went wrong after the said quarrel with the Minister. Be it as it may be, in background of these facts, if the petitioner-institution placed on record the Compact Disc (CD) recording of the events which took

place with the doctors of Ambika Hospital appears to have some foundation that in fact the officers were pressurized to obtain the letter of de-affiliation from the petitioner-institution.

One application was submitted under Order 1 Rule 10,C.P.C. By the petitioner for impleading Shri T.Dileep Kumar, President, Indian Nursing Council, New Delhi as respondent no.3 in the present contempt petition on 15.5.2006. The application filed only because of the reason that the State Government in reply (by the contemners) have stated that the State has not received the report from the Indian Nursing Council. The said was the contention of the contemner and according to the petitioner himself, that contention was wrong and in view of the facts mentioned in the order of the State Government dated 12.1.2006 wherein there is reference of the letter of the Indian Nursing Council dated 2.6.2005 by which the Indian Nursing Council again pointed out that the institution of the petitioner was inspected and on that basis, no objection was granted to the petitioner by the Indian Nursing Council subject to obtaining no objection by the petitioner from the State, therefore, there cannot be justification for initiating contempt proceedings against any of the officers of the Indian Nursing Council and the application deserves to be dismissed. Hence dismissed.

In view of the reasons given above, it is held that the order dated 12.1.2006 has been passed without looking into the material lying with

the Government itself in relation to the eligibility of the petitioner's claim for the no objection from the State Government for opening the B.Sc. Nursing Course College. Further in fact before passing the order dated 12.1.2006, efforts were made for collecting fresh evidence with clear intention to discard the material available on record which were in favour of the petitioner and that too on absolutely frivolous and false grounds. On 25.4.2006 only the time was sought on behalf of the contemners to clarify how the important and relevant evidence was not considered by the concerned authorities, then within no time in mere four days, it is said that the matter was again examined by the Government and thereafter, the report dated 29.4.2006 has been submitted before this Court to justify the rejection of the petitioner's NOC. In view of the reasons given above the report dated 29.4.2006 is nothing but action of deliberate act of not acting honestly and a clear act to mislead this Court by submitting wrong facts which are mentioned above in this order. Further, the observations made in the order dated 23.5.2006 of this Court after receipt of the report dated 29.4.2006 were also deliberately ignored and a camouflage created in the subsequently passed order dated 7.7.2006 that the contemner has looked into the order of this Court dated 1.3.2005 again and it has also been projected that the authorities carefully considered the order of this Court dated 23.5.2006 by quoting the order of this Court dated 23.5.2006 in the

order dated 7.7.2006 but from the reasons mentioned above, it is clear that in fact the authorities were clear in their mind and they decided not to decide the claim of the petitioner in pursuance of the order of this Court dated 1.3.2005 and they were bent upon to collect evidence and further evidence and reasons and further reasons for justifying their decision of rejection of No Objection Certificate of the petitioner-institution on false pretexts, false reasons and on the basis of the irrelevant considerations. In all the orders, neither the past was considered the material available on record nor the present material which were collected by the authorities nor the material which could have been taken into consideration as subsequent events, were looked into and lastly, that the authorities deliberately considered subsequent material but with clear object, did not consider the petitioner's claim that he constructed the hospital with 100 beds capacity with the approval of the State Government.

The Contempt Petition is allowed. All facts mentioned above are proved to be acts of deliberate disobedience of this Court's order dated 1.3.2005 and that Continued despite getting several opportunities even after filing of the contempt petition by the petitioner and various orders passed by this Court in the Contempt Petition, therefore, the contemner no.2 Shri Sudhir Bhargava, Secretary, Medical and Health Department, Government of Rajasthan, Jaipur is held guilty of deliberate

disobedience of this Court's order dated 1.3.2005 as well as for trying to mislead this Court and, therefore, is convicted for committing contempt of this Court and consequently, is sentenced to civil imprisonment for 15 days with a fine of Rs.10,000/-. In case of non-payment of the fine of Rs.10,000/-, the contemner no.2 Shri Sudhir Bhargava shall be liable for civil imprisonment of 15 days in addition to above. So far as contemner no.1 Shri G.S. Sandhu, the then Secretary, Medical and Health Department, Government of Rajasthan, Jaipur, though he is held guilty of not obeying the directions of this Court when he passed the order dated 12.1.2006 but since he is not on the post and had no opportunity to correct his mistake which opportunity was available to contemner no.2, therefore, he is exonerated from the charge of committing contempt of this Court but he is liable to pay the cost of the contempt petition which is assessed as Rs.5000/-.

The operation of this order is stayed for 30 days from the date of this order so that the contemners may avail legal remedy against the order.

(PRAKASH TATIA),J.

Mlt.